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3. Trial (§ 296 (2)*)—Erroneous Instruction as to Inadequacy of Culvert Cured by Following Instruction.—In an action for damages by flooding, due to inadequacy of culvert under railroad roadbed, an instruction, objectionable as being susceptible of the meaning that any “want of proper construction of the said culvert” would have rendered defendant liable, was cured by an instruction immediately following it, correctly stating the rule as to the degree of care required of a railroad in constructing a culvert.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

4. Railroads (§ 5½*)—New vol. 6A Key-No. Series—Director General Had No Right to Permit Injury by Faulty Culvert.—The Director General of Railroads had no more right to permit a faulty constructed culvert to operate injuriously to property owners than the railroad company itself, although he had nothing to do with the original construction of the culvert.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 579.]

Error to Circuit Court of City of Suffolk.

Actions by the Southern Oil & Feed Mills, Incorporated, against the Atlantic Coast Line Railroad Company and against Walker D. Hines, Director General of Railroads, respectively. Judgments for plaintiff, and defendants separately bring error. Affirmed.

Wm. B. McIlwaine and *Bernard Mann*, both of Petersburg, for plaintiffs in error.

Lewis & Harris, for defendant in error.

WATTS *v.* COMMONWEALTH.

March 17, 1921.

[106 S. E. 339.]

1. Indictment and Information (§ 110 (31)*)—Indictment Following Statutory Form Not Open to Attack.—Where an indictment followed the statutory form previously adjudged sufficient, it is not open to attack, though charging a second offense in violation of the Prohibition Law.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 413.]

2. Indictment and Information (§ 121 (4)*)—Bill of Particulars Sufficient in a Prosecution for Violation of Prohibition Law.—In a prosecution for a second offense against the Prohibition Law, the bill of particulars, informing accused with clearness and certainty of the cause and nature of his accusation, which named the persons to whom and designated the place where he was alleged to have illegally sold ardent spirits, is sufficient.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 403.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Jury (§ 58*)—Statute Requires Jurors to Be Drawn from Lists Furnished by Jury Commissioners.—Laws 1918, c. 340, requiring jurors to be drawn from a list furnished by a judge, was expressly repealed by Act Jan. 29, 1920 (Laws 1920, c. 1), and providing for juries to be drawn from lists furnished by jury commissioners and therefore defendant cannot complain that the *venire facias* was selected in that manner.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 32.]

4. Criminal Law (§ 1144 (12)*)—Presumption in Favor of Regularity of Proceeding, Where No Certificate of Evidence.—On writ of error to review a conviction under the Prohibition Law for a second offense, where there was no certificate of evidence, a certified copy of order of corporation court of Newport News, showing the defendant's previous conviction, must be deemed to have been regularly admitted, and the complaint in that connection that a witness should not have been allowed to testify to what could have been proven by the record in that court will be disregarded.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 335.]

5. Criminal Law (§ 1144 (14)*)—In the Absence of Certificate of Evidence, Instructions Will Be Presumed Warranted by Evidence.—Where there was no certificate of evidence, it will be presumed on error that an instruction given was warranted by the evidence, and a complaint of such instruction is unavailable; there being nothing on its face to indicate illegality.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 335.]

6. Criminal Law (§ 874*)—After Discharge Defendant Cannot Complain that the Court Did Not Poll the Jury.—The accused, when the foreman returns the verdict in open court, may have each juror polled before it is accepted, and if he does not the clerk, after reading the verdict, addresses the jury, "and so say you all," and if none of the jurors expresses dissent the verdict is recorded, hence it is too late, after acceptance and discharge of the jury, for accused to complain that they were not polled.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 54.]

Error to Corporation Court of Hopewell.

Joe W. Watts alias J. D. Watson was convicted of second offense under the Prohibition Law and he brings error. Affirmed.

David A. Harrison, Jr., and J. Toomer Garrow, both of Hopewell, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., and J. D. Hank, Jr., Asst. Atty. Gen., for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.